This record is a partial extract of the original cable. The full text of the original cable is not available.

UNCLAS SECTION 01 OF 03 NAIROBI 003287

SIPDIS

SENSITIVE

DEPT FOR AF/E, AF/EPS, EB/IFD/OMA
USAID FOR AFR/PPC PETER DELP, AFR/EA JEFF BORNS
MCC FOR KEVIN SABA
TREASURY FOR ANN ALIKONIS
LONDON AND PARIS FOR AFRICA WATCHERS

E.O. 12958: N/A
TAGS: ECON EAID EFIN KCOR PGOV KE
SUBJECT: KENYA PASSES TWO MAJOR ECONOMIC REFORM BILLS

Ref: A. Nairobi 3180, B. Nairobi 2651, C. 04 Nairobi 5038

Sensitive-but-unclassified. Not for release outside USG channels.

¶1. (U) This is a Joint Embassy-USAID message.

¶2. (SBU) Summary: Kenya's Parliament has passed two pieces of economic reform legislation, the Public Procurement Bill and the Privatization Bill. Both are important in the long march towards a stronger, faster growing economy and improved governance. In the short-term, both are required to unlock IMF and other donor funding, which in part explains why the government worked so hard to ensure their passage through an otherwise unproductive Parliament. Unless final, as yet unpublished, changes to both bills somehow offend the government or donors, it appears likely both will receive Presidential assent and become law. This is good news, but it also goes without saying that the importance and impact of these bills will ultimately depend on how effectively and aggressively they are implemented. End summary.

¶3. (SBU) In the final days before it adjourns August 16, Kenya's Parliament passed two critical governance and economic reform measures promised by the Government of Kenya (GOK) almost from the very start of the NARC administration over two years ago. The first is the Public Procurement and Disposal Bill 2005 (passed August 4), and the second is the Privatization Bill 2005 (passed August 10).

Procurement Bill: Changing the Rules of Game?

¶4. (U) While the final text of the Procurement Bill as finally passed is not yet available, broadly speaking, the law is intended to overhaul the entire system by which the GOK procures goods and services. Public procurement in its many guises over the decades has traditionally been, and remains, the single greatest source of corruption in Kenya. While the scope of such graft is hard to measure with any precision, there is little doubt that procurement-related graft has had, and continues to have, a major macro-impact on economic growth and development in Kenya in terms not only of the vast sums of money stolen or squandered, but also insofar as procurement-related graft over time has created disincentives and distortions to rational policymaking writ large.

¶5. (U) As we understand the Procurement Bill in its earlier draft form, the law will lead to the establishment of a new procurement oversight body, bar public servants from taking part in government tenders, seal loopholes to reduce opportunities for corruption, and streamline procurement procedures to make them less cumbersome and time-consuming - among a raft of other features. The draft has undergone revisions, however, including according to numerous press reports, changes that will provide preferences to Kenyan firms, including especially small and medium sized enterprises, when bidding on GOK tenders. While the proof will be in the fine print and in implementation, it is unlikely such provisions will be incompatible with Kenya's WTO obligations. We note that Kenya is not a signatory to the plurilateral WTO Agreement on Government Procurement.

-- ------
Privatization: Getting the State Out of the Economy
-- ------

¶6. (U) The Privatization Bill 2005 follows successive but limited efforts in the 1990s to reduce the role of the GOK in the economy, and represents the legal framework by which the NARC administration hopes to take privatization of state-owned enterprises (SOEs) to a higher level. Kenya continues to suffer from all of the usual problems

associated with excessive state-ownership of economic assets: lack of competitive markets in cases of monopolies, patronage and corruption, inefficiency and poor service delivery, low and poorly targeted investment in key areas of the economy (e.g. telecom), and excessive and unsustainable government budget outlays to support loss-making state firms.

¶7. (U) While the final text of the bill is also unavailable at the moment, its key feature is the establishment of a Privatization Commission, whose role will be to implement the privatization of state assets in a systematic, fair, and transparent manner. The bill takes a flexible approach to the means of privatizing SOEs, and according to press reports, late changes to the bill will, like those made to the Procurement Bill, provide special preferences to local investors as a means of encouraging Kenyan ownership of privatized companies. A complete assessment of the bill will also require clarification of Finance Minister David Mwiraria's statement, in which, according to press reports, he assured MPs the bill would not give way to "blanket privatization" and that the Government would not sell off "strategic" parastatals that offer "essential services" to the public. We also understand there are concerns about the size, composition, and mode of appointment of members of the Privatization Commission.

-- ---
IMF Program and Other Loans Hinge on Legislation
-- ---

¶8. (SBU) Passage of both bills is an important step in the long slog towards better, less corrupt governance and faster economic growth in Kenya. Both are also critical in the short-term to the GOK's financial status. As reported ref B, forward movement on Kenya's three-year, $240 million IMF program was made contingent on passage of the Procurement Bill. The IMF's conditionality was in turn driven by twin EU and World Bank credits, both of which require passage of the two bills as conditions for disbursement (refs B and C). In short, the GOK had compelling short-term reasons to put both bills at the top of its legislative agenda, and this explains why the administration, under the leadership of Vice President Moody Awori and Finance Minister David Mwiraria worked so hard to successfully ensure passage.

What Does the IMF Think?

¶9. (SBU) Econ Counselor spoke with Jurgen Reitmeier, Kenya IMF Resident Representative, on August 11. Reitmeier, like the Embassy, has not yet seen the final versions of either bill as passed by Parliament. Noting the "we need to see the fine print," Reitmeier nonetheless characterized passage of the two bills as "good news," and also reported that he had spoken with the Finance Minister, who had told him the final revisions made by MPs to the Procurement Bill were "acceptable" to the GOK. The bills still require presidential assent, but at this point, it seems unlikely that the Kibaki administration will send either back to Parliament for another round of revisions and debate starting in October - unless a reading of the fine print reveals features deemed unacceptable to the GOK and/or to the IMF, the World Bank, or the EU.

Comment: Proof As Always Will be in Pudding

¶10. (SBU) Three things. First, while long overdue, passage of these two landmark bills is good news, and the GOK deserves credit for pushing them through a Parliament whose performance this year has thus far been otherwise lackluster. Second, kudos to the IMF, the World Bank, and the EU, all of whom used their leverage to prod the GOK and Parliament into action. Without this pressure, the Finance Ministry probably would not have had the leverage and motivation it needed to win passage. Finally, passage of these two bills, while critical, is merely a mileage marker in a much longer journey. The bills will not matter much if they are not intelligently and aggressively implemented by the GOK. In this light, we expect assistance in implementing one or both bills to come up in discussions next week between the GOK and visiting officials from the Millennium Challenge Corporation (see ref A) as the latter considers Kenya for its Threshold Program. We think it's a topic worth exploring as the USG searches for new ways to effectively support better governance and economic reform in Kenya.

Bellamy